

**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

BARRY LOUIS LAMON,

Plaintiff,

v.

MCTAGGART, *et al.*,

Defendants.

Case No. 1:22-cv-01421-ADA-BAM (PC)

ORDER DENYING PLAINTIFF'S MOTION  
FOR SUBSTITUTION OF SERVICE  
WITHOUT PREJUDICE

(ECF No. 31)

ORDER DIRECTING DEFENDANTS TO  
FILE STATUS REPORT REGARDING RE-  
SERVICE OF NOTICE OF SUGGESTION OF  
DEATH

**THIRTY (30) DAYS**

Plaintiff Barry Louis Lamon ("Plaintiff") is a state prisoner proceeding *pro se* in this civil rights action pursuant to 42 U.S.C. § 1983. This action was removed from Kings County Superior Court on November 3, 2022. (ECF No. 1.) The second amended complaint has not yet been screened.

On April 4, 2023, Defendants filed a notice of suggestion of death of Defendant Tillery. (ECF No. 12.) Finding that there was no declaration of service or other proof reflecting that there was proper service of the notice on Defendant Tillery's successor or representative as provided by Federal Rule of Civil Procedure 4, on August 21, 2023 the Court notified the parties that the ninety-day period for filing a motion for substitution had not yet been triggered. (ECF No. 30.)

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1 Currently before the Court is Plaintiff's motion for substitution of service, filed September  
2 7, 2023. (ECF No. 31.) Plaintiff requests an order directing the United States Marshal's Office to  
3 conduct substituted service upon Defendant Tillery's next of kin. (*Id.*) Defendants have not yet  
4 had the opportunity to file a response, but the Court finds a response unnecessary. The motion is  
5 deemed submitted. Local Rule 230(l).

6 At this time, the Court finds that substituted service is not appropriate. Ordinarily, two or  
7 three attempts at personal service at a proper place qualifies as "reasonable diligence" and allows  
8 substituted service to be made. *Kremerman v. White*, 71 Cal. App. 5th 358, 373 (Cal. App. 2  
9 Dist. 2021) (citing *Bein v. Brechtel-Jochim Grp. Inc.*, 6 Cal. App. 4th 1387, 1391–92 (Cal.  
10 1992)). No attempts at personal service have been made, and therefore it does not appear that any  
11 party has exercised the required "reasonable diligence" to permit substituted service.

12 Accordingly, IT IS HEREBY ORDERED as follows:

- 13 1. Plaintiff's motion for substitution of service, (ECF No. 31), is DENIED, without  
14 prejudice; and
- 15 2. Within **thirty (30) days** from the date of service of this order, Defendants SHALL FILE a  
16 status report indicating the status of re-service of the notice of suggestion of death on  
17 Defendant Tillery's next of kin pursuant to Rule 4 or their intention regarding re-service.

18  
19 IT IS SO ORDERED.

20 Dated: September 11, 2023

21 /s/ Barbara A. McAuliffe  
22 UNITED STATES MAGISTRATE JUDGE  
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